



California Fair Political Practices Commission

July 13, 1989

Peter A. Bagatelos
Law offices of Bagatelos and Fadem
The International Building
601 California Street, Suite 1801
San Francisco, CA 94108

Re: Your Request for Informal Assistance
Our File No. I-89-278

Dear Mr. Bagatelos:

This letter confirms that your letter of May 4, 1989, is a fair reflection of my advice to you regarding the present status of Commission policy on the question of elected officials' participation on the boards of directors of non-profit organizations.

I do wish to clarify a number of concerns, however. The Thompson and Watson advice letters (Thompson Advice Letter, I-88-487, Watson Advice Letter, A-83-158), to which you refer in your letter, both addressed a unique circumstance where the elected officer's name was used in the name of the charity, and the elected official was to have control over the raising and disbursement of funds on behalf of the charity. Under those circumstances, the Commission advised that the control of the elected official could deem the funds collected and disbursed as political contributions.

The Commission has not recently addressed the question of restrictions on fundraising, in general, by public officials who serve on non-profit boards. At the present time, public officials should be careful not to participate in decisions regarding the expenditure or disbursement of funds raised for the group. (See Section 82016.)

The Commission has received a request for formal advice from the County of Santa Clara on the question of public officials' participation in fundraising for non-profits. In addition, within the next few months the Commission will be discussing the effects of Proposition 73 on Commission policy relative to payments which are deemed to be "political contributions." Perhaps you will want

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to provide testimony to the Commission at that time. We will keep you apprised of the exact date and time of future activity in this area.

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Kathryn E. Donovan
General Counsel

Lilly Spitz by Ked

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May 4, 1989

Ms. Lilly Spitz
Counsel, Legal Division
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Re: Elected Officials Who Serve on Non-Profit Boards

Dear Lilly:

This will confirm our telephone conversation on April 28, 1989. I sought your guidance as to the current advice being given by the Commission and staff relating to whether elected officials can serve as directors on non-profit boards without transforming such non-profit organizations into political committees under the Political Reform Act. This question arose recently in connection with a letter sent to C. Michael Thompson, of Assemblywoman Jackie Speier's office, in which you advised that Assemblywoman Speier should insulate herself from any participation in the raising or distribution of funds for a foundation bearing her name, in order to ensure that the foundation will not be deemed a controlled political committee.

In that letter, you also cited the Watson advice letter, (Number A-83-158), and the McCarty advice letter, (Number I-88-320), as well as various statutes and regulations to support your conclusion. I noted that your opinion letter did not mention a decision by the Commission itself; namely, "In the Matter of an Opinion Requested by Senator John A. Nejedly," (Advisory Opinion Number 75-190, April 8, 1976 (2 FPPC Opinions 46)). In that Opinion, the Commission decided that although Senator Nejedly was president of a non-profit organization which received donations and solicited contributions for other charitable organizations, he would not incur any reporting obligations as a result thereof.

This firm represents various elected officials, many of whom serve on the Boards of Directors of various non-profit organizations. In order to advise them properly, we need to understand how the Nejedly opinion, as well as the informal advice letters that have been issued, should be evaluated.

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I offered some comments to you in this regard. In my view, the Watson situation seemed to involve a foundation which was essentially an "alter ego" of the officeholder. It seemed that the purpose of the foundation was to promote the elected official as an officeholder and potential candidate for office. Under such circumstances, the "alter ego" foundation would clearly be deemed to have a primarily political purpose and would therefore be considered a controlled committee within the meaning of the Political Reform Act.

With respect to the Watson, McCarty, and Thompson letters, I am less certain that an "alter-ego" type situation existed and believe that conclusionary language was generally applied. The test questions mentioned in the last two paragraphs of the McCarty letter would, if answered positively, render a candidates' personal bank account and stationary a controlled committee. The element missing is whether the primary purpose of the particular account is for political purposes.

However, most non-profit charitable and civic/social welfare organizations are established for public interest purposes, such as helping underprivileged classes of persons, doing research and education, and lessening the burdens of government. Control of organizations having such purposes is normally in the hands of a Board of Directors which acts either in unison or by majority vote. The presence of an elected official on such a board could hardly be said to convert an organization, such as the United Way, into a political committee controlled by the official. In fact, in the case of charitable entities, federal tax law does not permit such an organization to support any candidate for office or promote candidacies. To do so would result in the loss of the organization's tax exempt status.

Therefore, while it is arguable that anything an elected official might do, including going to the supermarket to shop or helping people cross the street, might result in political benefit through exposure or praise for good work done, it seems to me that the definition of "political purposes" should be narrowly construed when applied to elected officials who participate in non-profit organizations. Where the purpose of such non-profit organizations clearly is not to promote candidates for office, then the conclusion should not be reached that the non-profit organization is a controlled committee even where there might be some "incidental" political benefits to the officeholder who participates in such an organization.

The current interpretation in the informal advice letters that have been issued are having a "chilling effect" on elected officials who are serving, or wish to serve, on non-profit boards. Since Proposition 73 imposes limitations on contributions to controlled committees, and many non-profit

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organizations are now, under this new interpretation, being viewed as controlled committees if an elected official serves on the board, elected officials are hesitant to serve on such boards for fear that the contributions received by non-profit organizations will be treated as contributions to them and applied against the officials' contribution limits. In the absence of specific guidelines, the tendency will be for public officials to choose not to become involved with non-profit organizations. Moreover, the organizations themselves, preferring not to have their contributions limited to \$1,000 per fiscal year, will be reluctant to name any elected official to their Board of Directors. This could have a very deleterious effect on the prestige and fundraising abilities of such organizations and their ability to carry out established programs for the public good.

I also advised you that, by analogy, the expanded definition of political committee, as including non-profit organizations under certain circumstances, could also be applied to trusts in which elected officials serve as a trustee. For example, a trust which gives scholarships to underprivileged children, or a family trust which gives grants to government and other charitable entities, could be construed as political committees of the elected official who serves as a trustee.

Finally, as you know, ballot measure committees and recall committees are not subject to Proposition 73's contribution limits due to First Amendment considerations explored in detail in such cases as Buckley v. Valeo, 424 U.S. 1 (1976), CARC v. Berkeley, 454 U.S. 290 (1981), and First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978). Many such committees are not only controlled by candidates and elected officials, but can be used to garner publicity that can affect future campaigns. It seems extremely anomalous that a controlled ballot measure committee is not subject to contribution limitations, while a charitable foundation which merely includes an elected official on its Board of Directors, or permits an elected official to solicit funds for its charitable work, could be limited to donations of \$1,000 per fiscal year. Surely First Amendment considerations which offer protection from regulation to ballot measure and recall committees should extend to charitable entities.

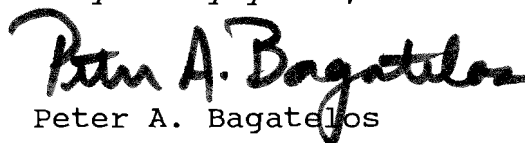
You advised me that this matter had been discussed recently by the legal staff. You indicated that Don Clark from Santa Clara County was planning to send a letter to the FPPC with respect to a County Supervisor serving on a non-profit board. This letter may result in further advice clarifying the situation in the following weeks. In addition, you indicated that this matter should probably go to the Commission itself as a proposed regulation providing specific guidance. Pending

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resolution of this question, it was your advice that public officials do not need to resign from any non-profit boards on which they serve, but that they should refrain from doing any fundraising for such organizations until this matter is addressed more formally and resolved.

Thank you very much for allowing me to provide some input informally at this time on this issue and for your assistance. We look forward to having this matter clarified further in the future.

Very truly yours,


Peter A. Bagatelos

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Encls.



California Fair Political Practices Commission

May 9, 1989

Peter Bagatelos
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601 California Street, Suite 1801
San Francisco, CA 94108

Re: Letter No. 89-278

Dear Mr. Bagatelos:

We received your letter requesting confirmation of advice under the Political Reform Act on May 9, 1989. Your letter has been assigned to our Technical Assistance and Analysis Division for response. If you have any questions, you may contact directly at (916) 322-5662.

If the letter is appropriate for confirmation without further analysis, we will attempt to expedite our response. A confirming response will be released after it has gone through our approval process. If the letter is not appropriate for this treatment, the staff person assigned to prepare the response will contact you shortly to advise you. In such cases, the normal analysis, review and approval process will be followed.

You should be aware that your letter and our response are public records which may be disclosed to any interested person upon receipt of a proper request for disclosure.

Sincerely,

Kathryn E. Donovan
General Counsel

KED:plh:confadv1